takeover of Raja Enterprises Ltd. by a company under the control of the defendant had been completed. This allegation is contained in an affidavit of the defendant sworn at Bangkok to which place the defendant is alleged to have absconded from Singapore.

In the circumstances I was of the opinion that the order of the Registrar was correct and I dismissed the appeal with costs."

The appellant complained that the learned Chief Justice had ignored the facts which he had set out in his affidavits which established the existence of several triable issues but had come to his decision that the order of the Registrar was correct solely on the ground that the appellant had absconded from Singapore.

The appellant said that the letter HTF 5 which the respondent bank said they received from Tan Sri Khoo was bogus and had been fabricated and he challenged its authenticity. The appellant said that if it was true that Tan Sri Khoo was released from his guarantee HTF 5 on or about December 13, 1973, as alleged by the respondent bank, he would not have written to Tan Sri Khoo the letter dated January 7, 1975, (AWD 2) undertaking to release the two guarantees — HTF 2 and the US$5,000,000 — signed by Tan Sri Khoo in favour of the respondent bank, and there would have been no necessity for Tan Sri Khoo to have written to him on April 19, 1975, (AWD 4) reminding him of his undertaking to obtain the release of the two guarantees HTF 2 and the one for US$5,000,000. The appellant said that if the respondent bank's intention was true that Tan Sri Khoo was released from his guarantee HTF 5 on or about December 13, 1973, then apparently the loan was not secured for a period of over one year as his guarantee NPL-1 was dated February 21, 1975, a most unlikely event.

The appellant said that the respondent bank had no right to release Tan Sri Khoo from his guarantee without his and/or Raja Enterprises Ltd.'s concurrence and/or approval and if, in fact, Tan Sri Khoo was so released, then it was as a result of collusion between the respondent bank and Tan Sri Khoo and was in clear violation or in flagrant breach of the agreement reached between Tan Sri Khoo and himself, of which the respondent bank knew or was fully aware.

Counsel for the appellant submitted that a question of law arose as regards the second guarantee KYM 8 executed by the Directors of Raja Enterprises Ltd. What is the legal effect of this second guarantee? Would it supersede the first guarantee NPL-1? It was pointed out that the appellant was at first sued on the second guarantee KYM 8. The Statement of Claim was subsequently amended and the appellant is now sued on the first guarantee NPL-1.

It is clear that there are a number of triable issues both of fact and law and the appellant should be allowed to defend this action unconditionally. We were of the view that in the light of all the circumstances if the respondent bank should get judgment at all it should be after a full hearing. We therefore allowed the appeal.

Appeal allowed.

Solicitors: *Francis T. Seow; Lee & Lee.*

RE SUNSHINE SECURITIES (PTE) LTD.; SUNSHINE SECURITIES (PTE) LTD. & ANOR. v. OFFICIAL RECEIVER AND LIQUIDATOR OF MOSBERT ACCEPTANCE LTD.

[C.A. (Wee Chong Jin C.J., Chua & Rajah JJ.) September 30, 1977]

[Singapore — Civil Appeal No. 42 of 1976]

Companies — Winding up — Admission of debt — Subsequent letter without prejudice asking for particulars of debt — Inability to pay debts — Evidence Act (Cap. 5), s. 23 — Companies Act (Cap. 185), s. 218.

Evidence — Admission of debt — Subsequent letter without prejudice asking for particulars of debt — Evidence Act (Cap. 5), s. 23.

This was an appeal from an order made in a winding up petition. The respondents, the liquidator of Mosbert Acceptance Ltd. had written to the appellant demanding payment of a debt of HK$529,054.97. The first appellant by its solicitors' letter admitted the debt and asked for two months to pay. Subsequently the first appellant's solicitor wrote a "without prejudice" letter asking for particulars of the debt. The respondent through his solicitors refused to grant the two months' extension and demanded payment. No reply was given to the first appellant's further request for particulars. The respondent subsequently filed a petition for winding up and an order was made accordingly. The appellants appealed.

Held, dismissing the appeal: (1) having regard to the clear and unequivocal admission of the petitioner's debt contained in the first letter the learned judge was entitled to come to the conclusion that there was no *bona fide* dispute;

(2) as the company had failed to pay or give security for the debt for which a statutory demand had been made, it was insolvent and may be wound up.

Cases referred to:-

(1) *Peacock* v. *Harper* 26 W.R. 109.

(2) *Re Welsh Brick Industries, Ltd.* [1946] 2 All E.R. 197, C.A.

COURT OF APPEAL.

Francis T. Seow for the appellants.

Tan Kok Quan for the respondent.

Rajah J. (delivering the judgment of the Court): This is an appeal arising out of an Order made by Choor Singh J. in the above Winding Up Petition.

The abovenamed first appellant is a company incorporated in Singapore in 1969 under the Companies Act and has its registered office at Room 1506, 15th Floor High Street Centre, North Bridge Road, Singapore. The nominal capital of the company is $1,000,000 divided into 1,000,000 ordinary shares of $1 each. The amount of the capital paid up or credited as paid up is $2. The shareholders of the Company are two in number, one being the second appellant and the other being one Low Seow Nam. The main object of the company was to act as attorneys, nominees, agents, receivers, managers and trustees.

On April 14, 1976 the Supreme Court of Hongkong ordered that Mosbert Acceptance Ltd., a company incorporated in Hongkong, be wound up and appointed the Official Receiver and Liquidator in Hongkong the liquidator thereof, the respondent herein. A first examination of the books of the company showed that the first appellant was indebted to the Hongkong company in the sum of HK$529,054.97 in respect of loans and advances made by it to the first appellant.

On May 24, 1976 the respondent purported to serve the first appellant with a notice of demand requiring it to pay the said sum.

On July 26, 1976, the respondent, acting through his Singapore solicitors, served at the registered office of the first appellant a second notice of demand bearing the same date under section 218 of the Companies Act in the following terms: —

"TAKE NOTICE that we, Messrs. Lee & Lee of 18th Floor, U.I.C. Building, Shenton Way, Singapore, Solicitors for the Official Receiver and Liquidator of Mosbert Acceptance Limited (a company incorporated in Hong Kong which was ordered to be wound up by the Supreme Court of Hong Kong on the 14th day of April 1976) whose address is: Official Receiver's Office, Registrar-General's Dept. Mosbert Group Liquidation Unit, United Chinese Bank Building, 31-37 Des Voeux Road Central, 6th Floor Hong Kong, hereby require you to pay to our client or to us the sum of HK$529,054.97 being the total amount of loans and advances owing to Mosbert Acceptance Limited.

AND FURTHER TAKE NOTICE that in the event of your failure and/or refusal to make payment of the full amount now due by you to our client or to us within three (3) weeks from the date of receipt hereof, we shall on behalf of our client petition for you to be wound up by the court upon the ground provided for in section 218(1)(e) read with section 218(2)(a) of the Singapore Companies Act, Cap. 185, namely that you are unable to pay your debts."

The first appellant by its solicitors' letter dated August 12, 1976 to the respondent's solicitors admitted the said debt and requested for two months to finalise arrangements to pay the said debt. The letter reads as follows: —

"Your letter dated 26th July, 1976 has been referred to us with instructions to reply to it.

We are instructed that our clients are trying to make arrangements to pay your clients the sum due to them and, in these circumstances, we have been further instructed to request you to let our clients have two months within which to finalise those arrangements."

However, on August 14, 1976, the first appellant's solicitors wrote a "Without Prejudice" letter to the respondent's solicitors as follows: —

"Further to our letter dated 12th August, 1976, we have been further instructed to request from you particulars showing how the sum of HK$529,054.97 became allegedly due and owing to your clients, how were they paid, to whom and who acknowledged receipt thereof?"

By a reply dated August 16, 1976 the respondent through his solicitors refused to grant the first appellant the two months' extension asked for to finalise arrangements to pay the said debt. At the end of the three weeks referred to in the said second letter of demand of July 26, 1976, the first appellant had not paid or satisfied the said sum or any part thereof nor had it made any offer to the respondent to secure or compound the same.

On August 25, 1976 the first appellant wrote again to the respondent's solicitors as follows: —

"However, in order to enable our client to ascertain the truth of the position, we shall be obliged if you could let us know, on a basis of urgency, how the said sum of HK$529,054.97 became allegedly due and owing to your clients, how was it paid, was it paid in one sum or several sums, when was it paid, to whom and who acknowledged receipt of the same, what were the conditions of the alleged loan or loans, together with the relevant documentary proof thereof."

There was no reply to this request from the respondent.

On July 30, 1976 the respondent filed a petition in Companies Winding Up No. 85 of 1976 to wind up the first appellant on the ground that it was insolvent and unable to pay its debts as it had not complied with the letter of demand of May 24, 1976.

On September 3, 1976, the said Petition No. 85 of 1976 was dismissed with costs, on the ground that the said letter of demand of May 24, 1976 was not served at the registered office of the first appellant, leave being reserved to the respondent to file a fresh petition.

On September 3, 1976 the respondent filed a fresh petition in Companies Winding Up No. 100 of 1976 to wind up the first appellant on the grounds that it was insolvent and unable to pay its debts as it had not complied with the letter of demand of July 26, 1976.

The first appellant is the owner of a piece of property known as No. 15 Barker Road, Singapore. It was shown in the first appellant's statement of accounts as at June 30, 1975 as standing at $173,247 but according to a recent valuation it had been valued at $450,000. It was admitted that, although this property had previously been mortgaged to the Chase Manhattan Bank for US$90,000, it had been free of such mortgage or other encumbrance for some time prior to the hearing of the fresh petition. The first appellant had no other asset.

The fresh petition was heard on October 8, 1976. Counsel for the first appellant contended that (i) there was a *bona fide* dispute as to the debt alleged to be owing and (ii) on the facts before the court it was not insolvent. However, the court ordered that the first appellant be wound up and appointed the Official Receiver liquidator thereof. The first appellant now appeals against the order on the following grounds: —

(1) The learned judge erred in fact and in law in holding that the appellant was indebted to Mosbert Acceptance Limited in the sum alleged.

(2) The learned judge erred in law in refusing to hear and/or consider: —

(a) the circumstances under which the letter dated August 12, 1976 was written;

(b) a submission on the effects in law of a subsequent letter written without prejudice to the petitioner's solicitors, and

(c) a submission on the facts in support of the appellant's case.

(3) The learned judge erred in law and in fact in holding that the property of the appellant, viz., 15, Barker Road, Singapore, was at the date of hearing, mortgaged to the Chase Manhattan Bank.

(4) The learned judge erred in fact and in law in finding that "the company was clearly insolvent and unable to pay its debts" when there was evidence on the record that the said property was worth far in excess of the alleged debt due to the petitioner.

With regard to grounds (1) and (2), counsel for the first appellant contended that (a) the learned trial

judge should by reason of the "without prejudice" letter of August 14, 1976 have excluded from the hearing of the petition the first appellant's letter of August 12, 1976 admitting the debt, and (b) if the learned trial judge had done so then there would have been introduced into the hearing the question of a bona fide dispute as to the debt, whereupon the petition should not have been proceeded with until such time as the dispute had been resolved. In support of this contention we were referred by him to section 23 of the Evidence Act and to the case of *Peacock* v. *Harper*.[1] In answer counsel for the respondent referred us to the case of *Re Welsh Brick Industries Ltd.*[2] which decided that the mere fact that unconditional leave to defend an action relating to a debt has been given, is not sufficient to make a winding-up petition one based upon a "disputed debt" and that it was for the judge exercising the jurisdiction in winding up to consider all the facts before him to decide whether or not there was a *bona fide* dispute as to the petitioner's debt, the grant of leave to defend being merely one matter to be taken into consideration.

Section 23 of the Evidence Act reads as follows:—

"In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given."

Having regard to the clear and unequivocal admission of the petitioner's debt contained in the first letter the learned judge was entitled to come to the conclusion that there was no *bona fide* dispute.

With regard to the first appellant's contention that the learned judge was wrong in finding that the company was unable to pay its debts, it is to be observed that the petition is based on the company's failure to pay or give security for the debt of which a statutory demand has been made. The law is clear and is as stated in *Buckley* on the Companies Acts, 13th Edition, at page 460 as follows: —

"The particular indications of insolvency mentioned in paragraphs (a), (b) and (c) are all instances of commercial insolvency, that is of the company being unable to meet current demands upon it. In such a case it is useless to say that if its assets are realised there will be ample to pay twenty shillings in the pound: this is not the test. A company may be at the same time insolvent and wealthy. It may have wealth locked up in investments not presently realisable; but although this be so, yet if it have not assets available to meet its current liabilities it is commercially insolvent and may be wound up."

Accordingly, in our judgment the appeal must fail and must be dismissed with costs.

Appeal dismissed.

Solicitors: *Francis T. Seow; Lee & Lee.*

WOH HUP (PTE.) LTD. v. CHINA INSURANCE CO. LTD.

[C.A. (Wee Chong Jin C.J., Choor Singh & D'Cotta JJ.) October 8, 1977]
[Singapore — Civil Appeal No. 23 of 1937]

Tort — Occupier's liability — Workman electrocuted by live electrical cable on ground — No proper warning sign — Compensation paid by insurers of employers of deceased workman — Whether insurers entitled to be indemnified by occupiers by right of subrogation — Workmen's Compensation Act (Cap. 130), s. 20(b).

Insurance — Workman's compensation paid by insurers of employers of deceased workman — Whether insurers entitled to be indemnified by occupiers by right of subrogation — Workmen's Compensation Act (Cap. 130), s. 20(b).

This was an appeal from the decision of the High Court ([1977] 2 M.L.J. 57). The respondents had claimed to be reimbursed by the appellants the sum of compensation which they had paid on behalf of their insured in respect of the death of their workman under the Workmen's Compensation Act. The High Court held that the appellants were the occupiers of the worksite where the accident occurred, that they were in occupational control of the worksite and were under a duty of care to the deceased. It was further held that there was no danger or warning signs at the worksite and the appellants had failed in their duty of care. The respondents were therefore held entitled to recover the sum which they had paid as insurers of the employers as workman's compensation in respect of the death of the deceased. The appellants appealed.

Held, dismissing the appeal: (1) the respondents were the persons by whom the compensation was paid within the meaning of section 20(b) of the Workmen's Compensation Act and were therefore entitled to be indemnified and this statutory right to be indemnified included the right to sue in their own name;

(2) the appellants knew or should have known that by allowing cables carrying electricity to lie on the ground across the path used by workmen they were creating a concealed danger to all workmen using that path and should have taken appropriate measures to warn them of such danger. As they had failed to do so the appellants were clearly in breach of their duty to the deceased who as a licensee was entitled to be warned of such concealed danger;

(3) On the facts there was no contributory negligence on the part of the deceased;

(4) there was evidence in this case to show that the sum of compensation was paid under section 8(2) of the Workmen's Compensation Act on a claim made by the Commissioner of Labour on behalf of the widow. This was sufficient evidence to shift the burden to the appellants and it was open to the appellants to show by evidence at the trial that in a common law action, the widow of the deceased could not have recovered the sum awarded as damages in a dependency action. This they failed to do and therefore the learned judge was right in allowing the claim of the respondents for reimbursement.

Case referred to:-

(1) *County Council of Galway* v. *The County of Galway Board of Health and Public Assistance* [1931] I.R. 547.

COURT OF APPEAL.

Cheong Yuen Hee for the appellants.

Peter Lee for the respondents.

Choor Singh J. (delivering the judgment of the Court): This appeal arises from a claim in the High Court by the abovenamed respondents to be reimbursed by the appellants the sum of $11,160 which they had paid on behalf of their insured, Cheng Meng Furniture Co. (Pte) Ltd. in respect of the death of their workman, one Sitaram son of Shonlal under the Workmen's Compensation Act (Cap. 130). By judgment dated April 26, 1977, the High Court ordered the appellants to pay the respondents the sum claimed.